

ABUSIVE AND HARASSING TELEPHONE CALLS

JUNE 27, 1966.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany S. 2825]

The Committee on Commerce, to which was referred the bill (S. 2825) to amend the Communications Act of 1934 by adding a new section 223 with respect to obscene or harassing telephone calls in interstate or foreign commerce, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

Strike out all after the enacting clause and insert in lieu thereof the following:

OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMERCE

SEC. 223. Whoever by means of telephone communication in the District of Columbia or in interstate or foreign commerce—

(a) makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent; or

(b) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; or

(c) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(d) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

Whoever knowingly permits any telephone under his control to be used for any purpose prohibited by this section—

Shall be fined not more than \$500 or imprisoned not more than six months, or both.

PURPOSE AND SUMMARY OF LEGISLATION

The purpose of this bill is to make it a Federal offense to make certain obscene or harassing telephone calls in interstate or foreign commerce or within the District of Columbia.

As reported, S. 2825 provides for a fine of not more than \$500 nor imprisonment for more than 6 months, or both, for anyone who, by means of telephone communication in the District of Columbia or in interstate or foreign commerce—

(a) makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent; or

(b) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; or

(c) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(d) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number.

The same penalty is applicable to whomever knowingly permits any telephone under his control to be used for any purpose prohibited by this section.

NEED FOR LEGISLATION

Obscene and harassing telephone calls have become a matter of serious concern. The telephone, despite its many benefits in our daily business and personal lives, unfortunately provides a ready cloak of anonymity to the sort of person who can somehow derive satisfaction or pleasure from frightening other people. This cloak has been availed of by such people in various ways. The telephone may ring at any hour of the day or night, to produce only a dead line when answered. Sometimes the caller will merely breathe heavily and then hang up. Sometimes he will utter obscenities.

And recently, a new and most offensive form of harassment has been devised. Families of servicemen are called and given false reports of death or injury, or even, hard as it is to believe, are gloatingly reminded of the death of a son or husband in service.

The dimensions of the problem are large and apparently growing. While the Bell Telephone System, which provides more than 80 percent of the Nation's telephone service, has only recently begun to compile statistics concerning the number of calls as to which it receives complaints, it estimates it receives approximately 375,000 complaints a year concerning abusive telephone calls that threaten or harass the recipients. It received some 46,000 complaints of such calls in March 1966. The following is a detailed breakdown of such calls:

Abusive calling summary

	Number of abusive calls, March	Number of accounts	Statutes	Complaints per 1,000,000 accounts
Alabama.....	354	626,761	Yes.....	565
Alaska.....			Yes.....	
Arizona.....	230	382,098	Yes.....	602
Arkansas.....	117	294,865	Yes.....	397
California.....	4,751	5,037,317	Yes.....	943
Colorado.....	422	593,733	Yes.....	711
Connecticut.....	1,277	903,148	Yes.....	1,414
Delaware.....	94	152,516	Yes.....	616
District of Columbia.....	796	294,375		2,704
Florida.....	460	1,129,187	Yes.....	407
Georgia.....	181	873,875	Yes.....	207
Hawaii.....			Yes.....	
Idaho.....	56	130,622	Yes.....	429
Illinois.....	3,513	¹ 2,770,063	Yes.....	1,268
Indiana.....	749	748,220	Yes.....	1,001
Iowa.....	0	550,759	No.....	(²)
Kansas.....	205	526,159	No.....	390
Kentucky.....	261	461,629	Yes.....	565
Louisiana.....	226	821,797	Yes.....	275
Maine.....	163	240,398	Yes.....	678
Maryland.....	987	1,005,152	Yes.....	982
Massachusetts.....	2,327	1,755,840	Yes.....	1,325
Michigan.....	0	2,197,124	Yes.....	(³)
Minnesota.....	0	815,831	Yes.....	(³)
Mississippi.....	58	380,852	Yes.....	152
Missouri.....	1,863	² 1,143,331	No.....	1,629
Montana.....	100	162,690	No.....	615
Nebraska.....	0	237,346	No.....	(³)
Nevada.....	130	49,842	No.....	2,608
New Hampshire.....	121	193,234	No.....	626
New Jersey.....	3,631	2,088,996	Yes.....	1,738
New Mexico.....	159	191,252	Yes.....	831
New York.....	5,960	5,356,327	Yes.....	1,113
North Carolina.....	182	550,058	Yes.....	331
North Dakota.....	0	124,884	Yes.....	(³)
Ohio.....	2,526	³ 2,337,365	Yes.....	1,081
Oklahoma.....	173	612,139	Yes.....	283
Oregon.....	278	468,353	No.....	594
Pennsylvania.....	3,203	2,882,227	Yes.....	1,111
Rhode Island.....	465	286,776	Yes.....	1,621
South Carolina.....	338	365,966	Yes.....	924
South Dakota.....	0	141,234	Yes.....	(³)
Tennessee.....	476	805,176	Yes.....	591
Texas.....	2,677	2,154,945	Yes.....	1,242
Utah.....	165	265,153	No.....	622
Vermont.....	37	100,380	No.....	369
Virginia.....	835	825,168	Yes.....	1,012
Washington.....	348	⁴ 752,262	No.....	463
West Virginia.....	378	375,824	Yes.....	1,006
Wisconsin.....	619	883,044	Yes.....	701
Wyoming.....	54	89,310	No.....	605

¹ Includes part of Indiana.² Includes piece of Illinois.³ Includes Cincinnati.⁴ Includes piece of Idaho.⁵ No report.

A telephone company witness testified that most of the calls are probably intrastate but indicated that it is only after an investigation of a complaint has been successfully completed that the telephone company is able to classify offending calls as intrastate or interstate. It should not be overlooked that these figures deal with complaints actually received by the telephone companies. It is to be assumed that many such calls are made which never become the subject of such a complaint.

Some remedies do exist at the present time. Thirty-eight States have statutes, varying somewhat in content, but generally prohibiting the making of various types of obscene, harassing, or annoying telephone calls. These specific laws, many of which are of recent origin, appear to be helping. The telephone companies' right to discontinue

service where making such calls violates company tariffs is probably also of some value. And it is to be hoped that recent telephone company publicity given to the problem and how they will serve customers who receive such calls will have a beneficial effect on the problem. But no Federal law deals with the problem (except 18 U.S.C. 875(c) prohibiting interstate communication containing a threat of personal injury) and the witnesses before your Committee generally agreed that Federal legislation directed to such abusive calls in interstate commerce is desirable to close the "interstate gap." This is a logical approach in view of the fact that the Federal Government has undertaken under the Communications Act of 1934 to establish a comprehensive scheme or regulation of the telephone system. Federal legislation dealing with interstate abusive calls should also simplify prosecutions of interstate calls by permitting them to take place where it may be convenient for the witnesses. In this regard, title 18 United States Code, section 3237, would permit prosecution of such offenses in any district in which the offense was begun, is continued, or is completed.

COMMITTEE HEARINGS

S. 2825 was introduced by Senator John O. Pastore, chairman of your committee's Subcommittee on Communications. Hearings on S. 2825 and on S. 3072, a bill introduced by Senator Long of Missouri to deal with the same subject, were held on May 11 and June 14, 1966, by the Subcommittee on Communications.

Senator Long of Missouri testified before the subcommittee with respect to his bill, S. 3072, and expressed his concern with the growing problem of telephone harassment. The Senator quoted from a letter of a constituent as well as an article appearing the previous night in the Washington Star to the effect that one of the suspects in the tragic slaying of a 9-year-old Montgomery County, Md., boy is a man who calls up mothers and tells them he has their children and is committing unnatural sex acts with them. It was also pointed out that "crank calls" had become so epidemic and evil that the New York Telephone Co. recently set up an annoyance call bureau to shield the victims. After a 7-day period of receiving the unwanted phone calls, and after keeping a detailed log of these calls, an individual phone subscriber can request the annoyance call bureau to screen all incoming calls. No monitoring is involved. The calls are merely intercepted, and then put through after obtaining the calling number.

Rosel H. Hyde, Acting Chairman of the Federal Communications Commission, testified that, while enforcement of any such legislation would be the responsibility of the Department of Justice, the Commission was in full accord with the committee's efforts to deal more effectively with the problem of obscene and harassing telephone calls. Chairman Hyde volunteered the expertise of the Commission and their staff did work with committee counsel to narrow the language of the bill as to the forms of proscribed conduct.

Brig. Gen. William W. Berg, Deputy Assistant Secretary of Defense for Military Personnel Policy, presented the views of the Department of Defense. General Berg testified that a recent spot check of only nine representative military bases in the United States to get some idea of the magnitude of the general problem of obscene and harassing

telephone calls turned up approximately 500 reported cases of all types during the past year at these installations. While most of these were unrelated to Vietnam, some 87 contacts involving 50 service families have been verified. These contacts were mostly by telephone but also included letters, postcards, telegrams, and even face-to-face visits. General Berg indicated the Department of Defense would prefer legislation encompassing these other contingencies as well but that they welcome and will strongly support any legislation which promises a measure of protection to the members of our Armed Forces and their families from these vicious and despicable acts. He stressed the impact of such acts on the morale and well-being, not only of the service members and families directly involved, but on service families generally.

Mr. Hubert Kertz, operating vice president of the American Telephone & Telegraph Co., appeared on behalf of the Bell System telephone operating companies. Mr. Kertz gave the committee helpful testimony as to some of the techniques used by telephone companies to identify the telephone lines from which abusive calls originate. Other techniques he thought it best not to disclose publicly lest the information make it easier for annoyance callers to avoid detection. Testimony was heard that these detection techniques have grown more sophisticated as telephone switching systems have become more complex and that the Bell System is continually working on better and quicker ways of making line identifications.

Three basic detection devices are used. One is a tone set, a box equipped with an on-and-off switch and connected by a wire to the annoyed customer's telephone. When a crank call is received, the customer flips the switch which places a 20,000-cycle tone on the circuit and also activates an alarm in the central office, alerting a switchman on duty to start tracing the call. This tone cannot be heard by either party to the telephone call. Another device is a pen register attached to the line of a prime suspect in a crank-call case. This instrument records number called and the time of the call. A third device acts as a computer in the central office and puts the calling number, called number, date and time on a punchcard.

Mr. Kertz testified that existing State and local criminal legislation is of great help to the telephone companies in their attempts to eliminate abusive calls. He stated that the Bell System believes Federal legislation will have a deterring effect on potential offenders and would be a practical advantage to the telephone companies in attempting to deal with abusive calls. Mr. Kertz specifically endorsed legislation along the lines of S. 2825. Mr. Kertz outlined the company procedures followed in cases of abusive calls, stated that all successful prosecutions are publicized for their deterrent effect, and testified that local law enforcement authorities have been most cooperative and extremely helpful in investigating these cases.

Adm. William C. Mott, executive vice president of U.S. Independent Telephone Association (USITA), a trade association composed of over 1,000 telephone companies, testified in support of the legislation. The USITA board of directors adopted a unanimous resolution in support of Federal legislation on the subject. Admiral Mott stated that a Federal statute prohibiting obscene or harassing telephone calls in interstate or foreign commerce should have a deterrent effect on the making of such calls and might further set an example for those States

not now having statutes or whose statutes might need revision. Admiral Mott supplied for the record a bulletin of USITA's Commercial Committee which explains in detail the procedures recommended to member companies for use in the handling of complaints and detection of the source of abusive calls. He was accompanied by Mr. Warren French, Jr., vice president, Shenandoah Telephone Co., Edinburg, Va., who described how his company has handled such complaints.

Mr. Paul Rodgers, general counsel, National Association of Railroad and Utilities Commissioners, expressed the view that State legislation deals adequately with intrastate threatening or harassing telephone calls and supports S. 2825 to fill the "interstate gap" in this matter.

Mr. Ramsey Clark, Deputy Attorney General, Department of Justice, submitted comments and appeared personally before the committee and indicated that while the Department of Justice was in accord with the salutary objectives of the legislation, it was unable to recommend its enactment.

AMENDMENTS

Your committee carefully considered the language of the bill in light of all testimony. A number of witnesses expressed a preference for S. 2825 which limits the Federal legislation to the District of Columbia and to calls in interstate and foreign commerce. Your committee heard testimony that the State laws in this area are working well and that cooperation received by the telephone companies from local authorities is excellent. Moreover, it was pointed out that even in the 12 States having no specific statute directed toward obscene and harassing calls, convictions are sometimes obtained for such offenses under general laws dealing with breaches of the peace, et cetera.

The States have, and properly should, assume responsibility for punishing the making of such calls in intrastate commerce. This approach continues the basic policy of the Congress whereby in the setting of telephone rates, the intrastate aspects have been left to State legislation with the interstate and foreign rates subject to the regulator authority of the Federal Communications Commission. And it would indeed be an unnecessary assumption of a herculean task were the Federal Government to attempt to assume responsibility for prosecuting abusive calls made in intrastate commerce.

Senator Long of Missouri testified that his bill was somewhat more narrowly drafted in order to afford protection to legitimate telephone uses and to maximize the protection of free speech. Acting Chairman Hyde of the Federal Communications Commission also indicated the desirability of narrowing the scope of the language. This matter was given close attention by your committee which has no desire to limit freedom of speech as it applies to the use of the telephone. The substitute amendment will reach the areas of committee concern while permitting, for example, legitimate business calls such as a creditor calling his debtor to demand payment, even though such call may, in fact, annoy the party called.

This revised language adopted by the committee is quoted in the opening paragraph of this report.

CONCLUSION

There can be no doubt that the increase in these vicious and cruel attacks over the telephone must be reversed by legislative action. Your committee believes that passage of this legislation will aid in deterring obscene and harassing telephone calls generally and will provide an appropriate remedy to reach those calls made within the District of Columbia or in interstate or foreign commerce. The loophole which exists today because of the lack of a Federal law covering this subject matter will be closed. The enactment of this legislation will serve the public interest.

AGENCY COMMENTS

Letter from the Acting Comptroller General of the United States dated February 7, 1966; letter from the Deputy Attorney General, Department of Justice, dated May 11, 1966; and letter from the Postmaster General, dated May 12, 1966, are set forth below:

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 7, 1966.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of January 27, 1966, you requested our comments on S. 2825, 89th Congress, 2d session. This bill would amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce.

We have no special knowledge concerning this measure and, therefore, make no recommendations regarding its enactment.

Sincerely yours,

FRANK H. WEITZEL,
Acting Comptroller General of the United States.

MAY 11, 1966.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning S. 2825, a bill to amend the Communications Act of 1934 with respect to obscene or harassing telephone calls in interstate or foreign commerce and S. 3072, a bill to amend the Communications Act of 1934, as amended, to prohibit threatening and harassing telephone communications.

S. 2825 would add a new section 223 to the Communications Act of 1934 to make it a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, for any person by means of an interstate or foreign commerce telephone communication (1) to make a comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent, (2) to make an anonymous call in a manner reasonably expected to annoy, abuse, torment, threaten, harass, or embarrass another, (3) to make repeated calls with intent to annoy, abuse, torment, threaten, harass, or embarrass another or (4) to permit a telephone under his control to be used for a purpose prohibited by the proposed section.

S. 3072 would amend the Communications Act to add a new section 511, which would make it a felony punishable by a fine of not more than \$500 or imprisonment for not more than 2 years, or both, to threaten physical injury to another by means of the telephone or repeatedly to contact another, or cause another to be contacted, by means of the telephone with intent to harass or torment such person.

It is not clear why a telephone communication which is reasonably to be expected to annoy, abuse, torment, threaten, harass, or embarrass another, should be punished only if it is anonymous and why one made with intent to annoy, abuse, torment, threaten, harass, or embarrass another, should be punished only if it is repeated. It would appear that if a call of the character described in S. 2825 is to be the subject of Federal law, it should be covered whether or not made anonymously and whether or not made repeatedly.

The words "harass," "torment," "annoy," "abuse," "threaten," and "embarrass," describing the conduct to be prohibited by this legislation, must be viewed in the light of constitutional requirements. In our view, standing alone such terms might well be unconstitutionally vague. It is a basic constitutional demand that the conduct to be prohibited in a criminal statute must be defined with sufficient preciseness as to give fair warning to persons who might come within the prohibition. Some measure of precision is provided by the bills in that they would prohibit calls made in a "manner reasonably to be expected" to accomplish the prohibited result or "with intent" to do so. Whether these criteria furnish sufficient guidance to a prospective caller, in order that he may determine whether his call will constitute a mere inconvenience or a harassment, is questionable.

There would probably be no problem with respect to the use of the words "obscene," "lewd," "lascivious," "filthy," or "indecent." Although these words, also, are not susceptible to precise definition, the Supreme Court has concluded that they are of sufficient exactitude to withstand attack on the ground that they are unconstitutionally vague. *Roth v. United States*, 354 U.S. 476, rehearing denied, 355 U.S. 852 (1957).

Aside from legal considerations, the subject measures present other problems which require careful thought. Thirty-eight States have statutes which make it a crime to place obscene and/or harassing telephone calls. The Department of Justice has no evidence that State and local law enforcement machinery in these States, as well as in those which may enact remedial legislation, cannot adequately protect the public from such calls. Unless the committee has clear and convincing evidence that Federal enforcement assistance is necessary, we believe that this responsibility should be left to the States.

We understand that the Bell System receives approximately 375,000 complaints annually charging telephone calls such as are encompassed by the legislation. The company has estimated that only about 500 of these complaints concern interstate calls. But even under S. 2825, which is limited to interstate communications, an investigation would be necessary in each case before the origin of the call is determined. Hence, under either bill, there would be a potential of 375,000 investigations, imposing a staggering burden upon the Federal Bureau of Investigation, to the detriment of many other important investigative responsibilities. The number of telephone calls which recipients

might characterize as obscene, harassing, or annoying could be enormous. Although there may be a difference in the case of calls spanning a long distance, we do not know of any investigative tools possessed by Federal investigative officers, whether in dealing with local calls or calls crossing the State lines, which are not now available to local officers.

As a technical observation, we note that paragraph (iv) of the proposed section 223 (S. 2825) which prohibits permitting a telephone to be used for a prohibited purpose, is incompatible with the introductory clause of the section.

The Department has also been asked for its views on amendment No. 557 which is intended to be proposed to S. 2825. The amendment, which would amend the Universal Military Training and Service Act to prohibit urging or advising, directly or indirectly, persons to evade or refuse registration or service in the Armed Forces, would appear to be unrelated to the subject of S. 2825 and S. 3072 and more properly the subject of separate consideration. In this connection, we note that an identical measure (S. 2975) is pending with the Committee on Armed Services.

While the Department of Justice is in accord with the salutary objectives of S. 2825 and S. 3072, for the reasons stated above, we are unable to recommend their enactment.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

THE POSTMASTER GENERAL,
Washington, D.C., May 12, 1966.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report on amendment 557 to S. 2825, relating to obscene or harassing telephone calls in interstate or foreign commerce.

The proposed amendment would amend section 12 of the Universal Military Training and Service Act (50 App. U.S.C. 462), which defines offenses against the act, and prescribes penalties for violations. It would prohibit any activity that would distribute, or attempt to distribute, written or printed matter tending to counsel, advise, or urge prospective draftees, their parents or guardians to refuse or evade registration or service in the Armed Forces. Violations would be made punishable by a fine up to \$10,000, or imprisonment up to 5 years, or both.

This Department has no recommendation to make with respect to the enactment of this amendment. Since the amendment makes no specific reference to use of the mails, we believe we will in no way be involved in the administration of the legislation. It is directed against persons who distribute or attempt to distribute the prohibited matter, and as such is not related to the question of its mailability.

The Bureau of the Budget has advised that from the standpoint of the administration's program there is no objection to the submission of this report to the committee.

Sincerely yours,

LAWRENCE F. O'BRIEN.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in *italic*):

COMMUNICATIONS ACT OF 1934, AS AMENDED

"OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMERCE

"SEC. 223. Whoever by means of telephone communication in the District of Columbia or in interstate or foreign commerce—

"(a) makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent; or

"(b) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; or

"(c) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

"(d) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

"Whoever knowingly permits any telephone under his control to be used for any purpose prohibited by this section—

"Shall be fined not more than \$500 or imprisoned not more than six months, or both."

